

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DELTA MANAGEMENT, INC.,

Plaintiff-Appellant,

v

FORD MOTOR CREDIT COMPANY,

Defendant-Appellee.

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UNPUBLISHED

February 8, 2007

No. 269931

Oakland Circuit Court

LC No. 2005-067663-CZ

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

In this action for conversion of an automobile, plaintiff appeals as of right from the circuit court's order denying its motion for summary disposition and granting summary disposition in favor of defendant pursuant to MCR 2.116(I)(2). We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant held a security interest in a 1995 Ford Explorer that was leased to Clark Cachino. In August 2000, the Detroit Police Department ("DPD") seized the vehicle as an abandoned vehicle and prepared an abandoned vehicle notice form. Although the certificate of title listed an Atlanta, Georgia, address for defendant, the DPD entered the address for defendant's Allen Park commercial lending office on the notice form. Defendant denies receiving notice that the vehicle was taken into custody and deemed abandoned. Neither defendant nor the vehicle's lessor responded to the notice or took steps to redeem the vehicle, and the DPD sold the vehicle to plaintiff at a police auction pursuant to MCL 257.252a.<sup>1</sup>

Defendant subsequently repossessed the vehicle in November 2000, and sold it at an auction in May 2001. In July 2005, plaintiff brought this action against defendant for statutory conversion and common-law conversion. Plaintiff moved for summary disposition under MCR 2.116(C)(10), arguing that defendant forfeited its interest in the vehicle by failing to respond to the abandoned vehicle notice from the DPD. In response, defendant denied receiving the

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<sup>1</sup> MCL 257.252a was amended by 2004 PA 495, effective October 1, 2005. Our citations to the statute in this opinion refer to the version of the statute in effect when the DPD took the vehicle into custody.

abandoned vehicle notice and also asserted that plaintiff's action was governed by the three-year limitations period in MCL 600.5805(10).

The circuit court determined that Article 2 of the Uniform Commercial Code ("UCC"), MCL 440.2101 *et seq.* governed defendant's interest in the vehicle and, therefore, plaintiff's action was subject to the three-year period of limitations for injury to property, MCL 600.5805(10). Because the action was filed more than three years after defendant's alleged conversion, the court held that it was barred by the statute of limitations. The court also determined that defendant never forfeited its rights to the vehicle under MCL 257.252a and, accordingly, there was no genuine issue of material fact that defendant lawfully took possession of the vehicle. The court therefore denied plaintiff's motion for summary disposition and granted summary disposition in favor of defendant.

We review a trial court's decision on a motion for summary disposition de novo. *Holmes v Michigan Capital Medical Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000).

Plaintiff argues that the circuit court erred in finding that its action for conversion was subject to a three-year period of limitations. We agree. Conversion is defined as "any distinct act of dominion wrongfully exerted over another's personal property, and occurs at the point that such wrongful dominion is asserted." *Thoma v Tracy Motor Sales, Inc*, 360 Mich 434, 438; 104 NW2d 360 (1960). Actions for conversion of personal property are generally subject to the "catch-all" six-year statute of limitation in MCL 600.5813. See *Thoma, supra* (conversion of automobile); *Davidson v Bugbee*, 227 Mich App 264; 575 NW2d 574 (1997) (conversion of farm equipment); *Chrysler Corp v Bunnell Chrysler Dodge, Inc*, 620 F Supp 1265, 1266-1267 (ED Mich, 1985) (conversion of automobiles). However, in *Continental Cas Co v Huron Valley Nat'l Bank*, 85 Mich App 319, 322-324; 271 NW2d 218 (1978), this Court held that when a negotiable instrument is converted as prescribed in the UCC, MCL 440.3419(1)(c) ("an instrument is converted when . . . it is paid on a forged indorsement"), the proper statute of limitations is the three-year limitation on actions for injury to property set forth in MCL 600.5805(7) (now MCL 600.5805[10]). Similarly, in *Brennan v Edward D Jones & Co*, 245 Mich App 156, 157-158; 626 NW2d 917 (2001), this Court held that the plaintiffs' claim for conversion involving the negotiation of stock certificates over the plaintiffs' forged signature was subject to "the three-year statute of limitations applicable to injuries to persons or property."

The circuit court did not clearly explain why it believed plaintiff's conversion action arose under the UCC. The circuit court determined that defendant was legally entitled to take possession of the vehicle under Article 2 of the UCC, which governs lease agreements. But unlike *Continental Cas Co* and *Brennan, supra*, plaintiff's claim here does not arise under the UCC and does not turn on whether defendant had rights under its original lease agreement with Cochino. Rather, plaintiff's claim turns on the validity of the proceedings to terminate defendant's security interest in the vehicle pursuant to the motor vehicle code, specifically MCL 257.252a, which governs the impoundment and disposition of abandoned vehicles. Although defendant's interest in the vehicle was originally governed by the UCC, the UCC has no bearing on whether defendant forfeited its rights by failing to respond to the abandoned vehicle notice. Plaintiff's claim for statutory conversion refers to MCL 600.2919a, not the UCC. We therefore conclude that plaintiff's action is governed by the general six-year limitations period in MCL 600.5813 and, therefore, was timely filed.

Plaintiff also argues that the circuit court erred in determining that defendant's security interest in the vehicle was never forfeited pursuant to MCL 257.252a. The trial court did not explain the basis for this conclusion, but evidently was persuaded by defendant's arguments that the DPD failed to comply with the statutory notice requirements set forth in MCL 257.252a, because it failed to send the abandoned vehicle notice to defendant's address listed on the certificate of title. We conclude, however, that the circuit court lacked jurisdiction to invalidate the sale of the vehicle under that statute. At the time the vehicle was deemed abandoned, MCL 257.252e provided:

(1) The following courts shall have jurisdiction to determine if a police agency has acted properly in processing a vehicle under section 252a, 252b(6) to (10), 252c, or 252d:

- (a) The district court.
- (b) A municipal court.
- (c) The common pleas court of the city of Detroit.

(2) The court specified in the notice prescribed in section 252a(4)(c) . . . shall be the court which has territorial jurisdiction at the location from where the vehicle was removed or deemed abandoned. . . .

In substance, the circuit court nullified the abandonment proceedings by determining that the DPD failed to act properly in processing the abandoned vehicle. The circuit lacked statutory jurisdiction to nullify those proceedings. Although plaintiff did not raise this issue, a "court is bound to notice the limits of authority and to sua sponte recognize its lack of jurisdiction or any pertinent boundaries on its proper exercise." *People v Clement*, 254 Mich App 387, 394; 657 NW2d 172 (2002) (internal quotation marks and citation omitted). Because the circuit court acted beyond its jurisdictional bounds when it determined that defendant never forfeited its rights pursuant to MCL 257.252a, we reverse the circuit court's order granting summary disposition to defendant and remand for further proceedings.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald  
/s/ Pat M. Donofrio